UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
NEW YORK BRANCH OFFICE
DIVISION OF JUDGES

CONNECTICUT RURAL LETTER CARRIERS ASSOCIATION
(UNITED STATES POSTAL SERVICE)

and **Case No. 34-CB-2713(P)**

LORRIE RENEE BROOKMAN, AN INDIVIDUAL

Lindsey Kotulski, Esq., Counsel for the General Counsel.
Michael Gan, Esq. and *Jean Marc Favreau, Esq., Peer & Gan LLP*, Counsel for the Respondent.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on October 27, 2004 in Hartford, Connecticut. The Complaint herein, which issued on July 23, 2004 and was based upon an unfair labor practice charge and amended charges filed on February 4, May 26, and June 28, 2004 by Lorrie Brookman, alleges that Connecticut Rural Letter Carriers Association, herein called the Respondent and the Union, threatened Brookman on about September 22, 2003[1] with adverse consequences because of her protected concerted activities and on about December 16 requested that the United States Postal Service, herein called the Employer and the Postal Service, discontinue assigning data-input work to Brookman, for reasons other than her failure to tender uniformly required initiation fees and dues, in violation of Section 8(b)(1)(A) and 8(b)(2) of the Act.

Findings of Fact

I. Jurisdiction

Respondent admits, and I find, that the Board has jurisdiction herein by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. Sec. 101, et seq.

II. Labor Organization Status

The Respondent admits that it has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Facts

The principal players herein are Brookman, a rural letter carrier for the Postal Service at its East Hampton, Connecticut branch, herein called the facility, Barry Donahue, the postmaster at the facility, Joann Doody, also a rural letter carrier as well as a steward for the Union, and Nathan Gillotti, state president and state steward for the Union. Donahue is the postmaster for

[1] Unless indicated otherwise, all dates referred to herein relate to the year 2003.

the East Hampton office, as well as a branch office in Marlborough, Connecticut, with a total of about thirty five employees, divided into three categories, each represented by its own union: city delivery carriers, rural carriers and clerks. Donahue's immediate supervisor is William Cournoyer, Postal Operations Manager.

It is clear from the testimony that there was a substantial amount of turmoil and tension at the facility. Letters from U.S. Congressmen and complaints from employees at the facility resulted in a number of meetings in December. Preceding these meetings were some conversations between Brookman and Doody and Brookman and Gillotti, and computer data input training and assignments that Donahue gave to Brookman.

Brookman became a steward for the Union on about April 15, and on that date Donahue was notified that she was the steward covering the facility. In July, she heard rumors that a petition was being passed around the post office to have her removed as steward and, on August 14 she resigned that position because of the "stress...of internal union issues in the office and with the Connecticut State Board..." She testified that she called Gillotti on August 14 and told him that she was resigning as the steward, and he told her that he had a meeting with some of the carriers from the office and members of the State Board concerning "issues" that they had with Brookman. She told him that she felt that it was inappropriate that he was meeting with these people without her knowledge, and he told her that he didn't feel that he was obligated to notify her. Doody replaced Brookman as steward.

Brookman also called Doody on August 14 and told her that she was resigning as steward. She was asked by counsel for the Respondent about this telephone call:

> Q And isn't it true that you told Ms. Doody, "All the changes I have made, they don't like. They are jerks, no better than the postmaster, nothing but a bunch of jealous bitches." You told that to her, correct?
>
> A I believe the exact wording may be different, but somewhere along those lines.

Doody testified, as well, about this August 14 telephone call. After Brookman called her and left a message, she called Brookman at about 5:30 that day. Prior to making this call to Brookman, she received a telephone call from Gillotti telling her that Brookman had resigned as steward, and asking her (Doody) to act as the steward until he found somebody to cover the position. While she was talking to Brookman, she was taking notes of what she said. According to these notes, and her testimony, Brookman said:

> All the changes I have made, they don't like. They are all jerks, no better than the postmaster. Nothing but a bunch of jealous bitches.
>
> I'm gonna file a grievance every single day and just wait until one gets fucked up, and I'm going straight to the Labor Board and filing charges. I'm quitting as steward and leaving the union. There are plenty of violations that I ignored. Patty Sargent was the only one who had the balls to tell those idiots this was the way it was, they had better learn their jobs.
>
> The clerks were complaining about losing hours by not sorting mail in the AM- "I don't care about a clerk." I'm tired of getting screwed, and I'm not going to anymore. I'm the only one who knows anything about anything. All they had to do was ask. Instead they all went behind my back. Nate had over 2 days to return my call- I had to call him yesterday.

> All a bunch of idiots. I controlled the boss. They will get nowhere with him. I had his respect.

She testified that these notes are "pretty much verbatim. It's not everything. I couldn't write that fast." Brookman testified that she did not make the statements that Doody attributes to her in the second, third and fourth paragraphs stated above.

The Complaint alleges that on about September 22, 2004, at the East Hampton facility, Doody threatened Brookman with adverse consequences because of her protected concerted activities. Actually, this was a telephone call that Brookman made to Doody at her home on September 20. Brookman testified that she called Doody to discuss concerns about her pay and comments allegedly made by another carrier to Brookman's substitute carrier questioning her knowledge of her routes. Doody

> ...indicated that my route had received a suspicious amount of interim adjustments[2] and she was questioning the validity of the miles on my route and the fact that I had received a mail truck on my route, and that she was going to be looking into my route evaluations...and that she would hate to have to defend me for any improprieties...and that everything better be on the up-and-up...

Brookman responded that she thought that Doody's comments were inappropriate and she called Gillotti and told him what Doody had said to her and that she felt that the comments were inappropriate. She also told him that she would be speaking to the Labor Board, and that if Doody did anything that affected her job or her pay, she would file charges with the Board. On September 27, Brookman wrote to Gillotti, repeating what she said about Doody, and that she spoke to somebody from the Labor Board about her rights, and that she could file charges with the Board if she felt those rights were violated. In addition, she told him that she was going to get a lawyer to further protect her rights. Doody testified that when Brookman called her on September 20, Brookman initially told her that her substitute was going to file a violence in the workplace grievance against a fellow employee. During this conversation, she never told Brookman that she was going to investigate her route or that she had better keep things on the up-and-up, although Brookman spoke about the increased demands of her route. There was no mention of Doody's possible role in representing her in any grievances or adjustments. When I asked Doody if she said anything to Brookman during this conversation indicating that she would take some action against her or do something to her, she answered: "Absolutely not."

In October, Donahue offered Brookman and another employee, Elizabeth Hardy, the opportunity to be trained to perform computer data input work, and both agreed to do so. Brookman was given a total of two hours forty five minutes of training between October 15 and November 13, for which she received "O time" which is similar to compensatory time to be accumulated and used at a later date. As a result of her data input work, allegations arose that one of the rural carriers, Louise Barber, failed to sign her time sheet and may have cheated on time, for which she was disciplined. Sometime shortly after December 16, Donahue told Brookman that she would no longer be doing the higher level work (the computer data input work) as a result of the December 16 meeting where Gillotti expressed concerns about her performing that work. She resumed performing computer data input work in June 2004.

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[2] Pay and adjustments for rural carriers are affected by the amount of miles and boxes on the route operated, as well as other factors.

On December 12, Brookman wrote to Gillotti that she wished to file internal union charges against Doody and local steward Kimberly Biondi for violation of the Union bylaws, and between December 12 and June 2004, she filed in excess of twenty internal union charges against Doody, Biondi and others.. She testified that she filed these charges because "it was evident" that Doody and Biondi were showing Brookman's personal records to other carriers who were not entitled to see them. She testified that these other carriers filed internal union charges against her based upon her actions while she was a steward, but the state board dismissed these charges as untimely.

As a result of the turmoil at the facility, meetings were conducted there on December 12, 16 and 19. Gillotti testified that on the morning of December 12 he received a telephone call from Cournoyer saying that he had concerns about the "work environment" at the facility and he asked Gillotti to go to the facility and tell the employees that the district would be investigating the situation and would take some kind of action to remedy it. Prior to going to the facility, Gillotti called Cournoyer and asked him to remove Donahue from the facility for the day because he would feel more comfortable talking to the employees outside of Donahue's presence, and Cournoyer agreed. Gillotti met with the employees at the facility and told them that the district would be involved in the office the following week, when they would be coming to the facility to listen to the carriers' concerns. Brookman testified that on December 12 Gillotti came to the facility and asked the rural carriers to meet with him. Gillotti told the carriers that he would be meeting on December 16 with Cournoyer, Vera Wright, from Human Resources, and others to discuss the concerns and grievances at the facility. Toward the end of the meeting Brookman said:

> I felt all of this that was going on in the office had nothing to do with the postmaster, that it was all against me, and it was their attempt, meaning the carriers, to get even with me, and that they would all still be kissing his [Donahue] ass to get their way as they had so successfully done in the 15 years prior to get their way with him.

On December 16, a meeting took place attended by Donahue, Gillotti, Cournoyer, Wright, and Tom O'Keefe, a labor relations representative for the Postal Service. A number of issues were discussed at this meeting, one of which was Brookman's performing computer data input work. Donahue testified extensively about what Gillotti said in this regard. He initially testified: "Basically, there were concerns raised by Nate Gillotti as far as Ms. Brookman performing the data entry work." He then testified that he (Donahue) said that he wanted to train some people to perform the work and Brookman was one person that he was training:

> He [Gillotti] was uncomfortable with that...He did not want her doing the data input work in the main office. He made a comment that "Why don't you use her in Marlborough?" or "It would be all right in Marlborough." I thought that was an unusual, inconsistent comment to make because in my mind if she was all right to use in the Marlborough office where I also had female rural carriers who possibly disliked her or disapproved of her for various reasons. That seemed to be a real sticking point among a couple of other issues.

He testified further that Gillotti "...definitely voiced his opinion about her doing that work. He didn't feel it was right. He had a concern about how this was going to be paid..." At the conclusion of the meeting Donahue said, "Fine, I won't use her on a higher level any more" and didn't until June 2004, and sometime after this meeting, Donahue told Brookman that he was not going to be able to use her for data input work anymore because of objections by Gillotti at the December 16 meeting. On cross examination, Donahue testified that Gillotti said that he had "concerns" about Brookman performing this work: "And it was concerns that she was going, had

access to their trip sheets and was doing, entering times from all the rural carriers' trip sheets into the computer...It was causing problems...with the other female carriers...in the office."

On direct examination, Gillotti was asked if there was any discussion of Brookman performing the data input work at the December 16 meeting, and he testified: "Not that I can recall." On cross examination he was asked:

> Q So, is it your testimony that you didn't have any conversations with anyone in management about Lorrie Brookman and doing higher level work?
>
> A Well, I mean it was discussed in front of me, yes, without a doubt. I mean I was there, I did not object to it.

On December 19, a meeting at the facility was attended by the employees, as well as Cournoyer, Wright, O'Keefe, Donahue and Gillotti, at which the employees expressed their concerns about the operation of the facility, including the workplace environment. Brookman testified that although she spoke at this meeting, there was no mention of the data-input work. Donahue testified that at the conclusion of the meeting, Wright said to him "that somebody ought to calm her [Brookman] down." Gillotti testified that it was at the December 19 meeting where it was decided that Brookman would temporarily stop performing the data input work. He testified that when the employees returned to work at the conclusion of that meeting, O'Keefe brought up the subject of Brookman performing the higher level work, and "...it was agreed upon by Cournoyer and Vera [Wright] that she should not be doing that work at this time...to get things to calm down a little bit. So one of the things they wanted to do temporarily was stop that higher level work of Lorrie Brookman." When asked for more specifics about this discussion, he testified that "it had to do with the tension in the office" and the calls from the congressmen. When asked if he disagreed with that decision, he testified that he did not. In answer to questions from me, he testified that he does not recall saying anything in this discussion of Brookman performing the data input work, although he did not object to Cournoyer's decision that Brookman would not continue to perform that work.

IV. Analysis

It is initially alleged that on about September 20, the Respondent, by Doody, threatened Brookman with adverse consequences because of her protected concerted activities. Initially, I note that the record fails to disclose any protected concerted activities engaged in by Brookman, other than the fact that she was a steward for the Union for four months before resigning her position on August 14. The only other activities that she engaged in were her comments to Doody in the August 14 telephone conversation, as well as what she said to the other employees at the December 12 meeting, both of which were more in the nature of a diatribe and complaints about her fellow employees rather than protected concerted activities. In addition, she filed numerous internal union charges between December and June 2004. Regardless, I found Doody's testimony about the September 20 telephone call more credible than Brookman's version of the call. My observation of Doody convinces me that she is a more controlled person unlikely to make the threat that Brookman attributes to her, considering their prior history, especially the August 14 telephone conversation and the obvious adversarial relationship between them. I therefore find that no threat was made in this September 20 telephone call, and recommend that this allegation be dismissed.

Counsel for the Respondent, at the hearing and in his brief, argues that this allegation should be dismissed as time barred by Section 10(b) of the Act. The original charge herein, filed on February 4, 2004, does not refer to this September 20 incident. The first charge that does

refer to these incidents was not filed until June 28, 2004, over nine months after the alleged incident. Counsel for the Respondent further alleges in his brief that the June 28 charge is not "closely related" to the original charge. As I have dismissed this allegation for credibility reasons, I find it unnecessary to decide this Section 10(b) issue.

The remaining allegation is that on about December 16, the Respondent, by Gillotti, requested that the Employer discontinue assigning data-input work to Brookman. There is a credibility issue herein between the testimony of Donahue and Gillotti, and I have little difficulty crediting Donahue's testimony on the subject over that of Gillotti. As the postmaster of the facility, he was in a difficult position of testifying against the Union's position, and he had no obvious reason to testify in any way other than truthfully. In addition, I find his testimony substantially more reasonable than Gillotti's in that it is highly unlikely that, as Gillotti testified, it was Cournoyer, O'Keefe and Donahue who decided that Brookman would not be assigned any more data-input work, while Gillotti stood aside silently, and that all he did was to not object to their decision. Donahue testified fairly extensively as to what Gillotti said to him on December 16 about Brookman's data-input work. He principally testified that Gillotti expressed "concerns" about her performing the work at the facility which, apparently, increased the tension at the facility. I believe that it is reasonable to conclude that the reason for Gillotti's concern was the obvious animosity between Brookman and most of the other employees at the facility. In addition, the fact that her data-input work resulted in the discipline of Barber, may have made the situation even more difficult. This conclusion is reinforced by Gillotti's statement to Donahue that he should use Brookman on the data-input work at the Marlborough office, rather than at the facility. Counsel for the General Counsel, in her brief, argues that because Gillotti testified that he never attempted to have Brookman removed from performing the data-input work, the Respondent should not be permitted to offer a legitimate basis for his request. Although I have discredited Gillotti's testimony of his lack of involvement in this decision, I have found that based upon all the record evidence, including Gillotti's testimony, there was a substantial amount of turmoil and tension at the facility, and that was the reason for Gillotti's request. I therefore reject this argument.

The ultimate issue therefore is whether the Respondent violated Section 8(b)(1)(A) and (2) of the Act when Gillotti expressed his "concerns" to Donahue about Brookman performing the data-input work and, as a result, the Employer stopped assigning her that work for the next six months. This can be divided into two issues. Was the means employed by Gillotti herein, expressing his "concerns" to Donahue about Brookman performing the data-input work, rather than simply telling Donahue not to give her the work, proscribed by the Act, and was the reason for his request, the antagonism between Brookman and most of the other employees at the facility, proscribed by the Act. I find that the answer to the first question is yes and the answer to the second question is no, and would therefore recommend that the Complaint herein be dismissed in its entirety.

In *Toledo World Terminals*, 289 NLRB 670, 673 (1988) and *Wenner Ford Tractor Rentals, Inc.*, 315 NLRB 964, 965 (1994), the Board stated that although circumstantial evidence can be sufficient to find a violation of the Act, "to establish an 'attempt to cause' violation, there must be some evidence of union conduct; it is not sufficient that the employer's conduct might please the union." In *M. W. Kellogg Constructors, Inc.*, 273 NLRB 1049, 1051 (1984), the Board stated:

> To establish a violation of Section 8(b)(2) of the Act, direct evidence that the Union expressly demanded the discrimination is not necessary. A union can be found to have caused employer discrimination if there is sufficient evidence to support a reasonable inference of a union request or an employer-union understanding.

On the other hand, in *George Williams Sheet Metal Co.*, 201 NLRB 1050, 1055 (1973), where the union told the employer that the other men on the job would quit unless the employee in question was taken off the job, the Board, in dismissing the Complaint, found that the union did not instigate the discharge. Rather, "the union officials relayed the [employees] threats to the Company without either endorsing or condemning the threats. In so doing they were not acting to promote any interest or policy of the Union."

The Board employs *Wright Line*, 251 NLRB 1083 (1980) in allocating the burdens of proof in Section 8(b)(2) cases as well as Section 8(a)(3) cases. *United Paperworkers International Union, Local 1048, AFL*-CIO, 323 NLRB 1042, 1044 (1997). In the instant matter, I find that Counsel for the General Counsel has sustained her initial burden that Donahue's decision to no longer assign Brookman the data-input work resulted from Gillotti's comments about his concern with her performing that work, and I further find that she would have continued to perform that work absent Gillotti's comments on December 16. I therefore find that Gillotti's comments to Donahue on December 16 were proscribed by the Act.

As to whether the Union's action violates Section 8(b)(2) of the Act, in *NLRB v. Local 294, International Brotherhood of Teamsters*, 317 F.2d 746, 748 (2d Cir. 1963), the union referred to an employee as a "trouble maker" and "no good" and said that there were plenty of other reliable men whom the company could employ. The Court found no violation because there was no proof that the union was motivated by considerations of the employee's union membership or activity, stating: "The union does not commit an unfair labor practice merely because it causes or attempts to cause an employer to promote or demote an employee or to discriminate for or against him." The Court stated further that Section 8(b)(2) is not violated unless the action sought by the union would constitute a violation of Section 8(a)(3) if the employer acted without the union's instigation:

> An employer who discriminates among employees does not violate Section 8(a)(3) unless the discrimination is based upon union membership or other union-connected activities. It is obvious, for example, that the employer's promotion or the demotion of an employee who is a union official is not a violation of the Act unless the discrimination for or against him is based on his union activity. It seems to us to be equally obvious that the union's seeking such a promotion or demotion would not constitute an unfair labor practice if the union's action was based upon the employee's merit or demerit and was unconnected with his union membership or activities.

In *Philadelphia Typographical Union No. 2*, 189 NLRB 829 (1971), the discriminatee, while an officer of the union, had been charged with, and subsequently was convicted of, embezzling union funds. Because of this, the union asked the employer to discharge him as an undesirable employee, and he was subsequently laid off. In reversing the trial examiner's decision, and dismissing the Complaint, the Board stated that:

> the Trial Examiner, in effect, held that an 8(b)(2) violation is conclusively presumed simply on facts showing that a labor organization had caused the impairment of an employee's working conditions for reasons other than the nonpayment of dues. Under this analysis, motivation is immaterial, and it is no defense for a union to show that its action was based upon legitimate and reasonable considerations totally unrelated to the encouragement of union membership, either in design or effect.

The Board concluded:

> ...the distinction between lawful and unlawful discrimination must be based upon whether the conduct encourages or discourages union membership, and that a finding to this effect, whether by inference or specific proof, is requisite to an 8(a)(3) or 8(b)(2) violation...we are satisfied that the conduct attributed to Respondent, since motivated solely by Kelley's embezzlement, did not constitute unlawful discrimination proscribed by the Act. A discharge so grounded, if the basis for an employer's decision to terminate, would not run afoul of the Act.

In *The Lummus Company v. NLRB*, 339 F.2d 728, 733-734 (D.C. Cir. 1964), the Court stated:

> whenever a union functions properly the encouragement of union membership is a natural by-product; and a union pursuing proper objectives will often cause an employer to take action which results in disparate treatment among employees; a disparity may develop from perfectly proper steps. In such cases, the Act is not violated. However, if the union's action, directed to an employer, was intended to discipline an individual or a particular group for violation of union rules, or to encourage individuals to accept the authority of union officers, or to obtain advantages for union members over non-members, such action constitutes an unfair labor practice; it breaches the wall erected by the Act between organizational rights and job opportunities. Intention becomes the touchstone; in determining whether the section has been violated, the "true purpose" or "real motive" behind the actions of the union should be ascertained. And here, as in every other fact finding, inferences from circumstances are permissible.

See also *NLRB v. Wismer and Becker Contracting Engineers*, 603 F.2d 1383 (9th Cir. 1979).

As stated above, I find that Gillotti's stated "concerns" to Donahue about Brookman performing data-input work were based upon the apparent animosity and antagonism between Brookman and many of the other employees at the facility, and the resulting tension at the facility, rather than upon her Union or protected concerted activities or the violation of union rules. I therefore find that his statement to Donahue, which resulted in Brookman not receiving the data-input work for six months, did not violate the Act.

Conclusions of Law

1. The Board has jurisdiction in this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. Sec. 101, et seq.

2. The Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not violate Section 8(b)(1)(A) or Section 8(b)(2) of the Act.

On these findings of fact, conclusions of law and on the entire record, I hereby issue the following recommended[3]

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

Having found that the Respondent has not engaged in the unfair labor practices alleged in the Complaint, I recommend that the Complaint be dismissed in its entirety.

Dated, Washington, D.C.

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Joel P. Biblowitz
Administrative Law Judge